



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: MAY 15, 2023

IN THE MATTER OF:

Appeal Board No. 628544

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination, disqualifying the claimant from receiving benefits, effective December 5, 2022, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed March 10, 2023 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant was employed for approximately one month as a full-time general laborer. The claimant was supervised by DW, who was the brother of the company's owner, TJ. At hire, the business manager advised the claimant that he would be working for DW, "the most miserable (vulgarity) on the planet." He assumed she was kidding. The claimant worked directly with the second lead, the job-site manager, Nick, who controlled the workflow.

From the start of his employment, the claimant was immediately struck by DW's continued use of profanity and vulgarity which DW regularly directed toward the claimant and his coworkers. DW would slam pipes around to scare employees. DW would swear at the claimant and would bring up his errors, on the job, in

front of coworkers. On one occasion, Nick and the claimant went to pick up DW in the employer's truck. As the claimant was moving from the front seat to the back of the truck, DW directed a tirade of vulgarity at the claimant. The claimant told his lead, Nick, when that incident occurred, that he could not deal with being treated in that manner; he disclosed that he was looking for another job. Nick responded that he understood but offered only "What can you do?" Every time that the claimant spoke with Nick about DW, Nick would respond "What can you do?" and "Don't blame me." The claimant could no longer tolerate working under such abuse from DW.

On November 22, 2022, DW told the claimant "Sometimes (you) overthink... or you don't ...think at all" with vulgarity for emphasis. In response, the claimant went to speak with the business manager. He notified the business manager that he intended to resign. He explained to her that DW made him feel like he could do nothing right and that DW regularly belittled him. The claimant explained, too, that DW had thrown a piece of steel at a coworker's back as the coworker walked away, all while calling the coworker vulgarities. She offered no response; she simply directed him to speak with the owner.

On November 23, 2022, the claimant then had a conversation with the owner, TJ. He advised TJ that his brother, DW, was screaming, swearing, belittling, and threatening employees including him. TJ explained to the claimant that DW yelled because "he had to, because it's loud" and because none of the employees "know what they are doing." TJ did not offer the claimant another assignment, nor did he offer to speak with DW to rectify the matter. TJ said nothing more and left to attend a meeting. As a result, the claimant elected to turn in his hardhat that same day and did not resume working thereafter.

**OPINION:** The credible evidence establishes that the claimant resigned due to the continued verbal abuse by his supervisor, DW, which exceeded the bounds of propriety and remained unchecked by the employer. Although the employer contends that the claimant declined a change of assignment prior to his resignation, we reject the contention as unpersuasive due to the claimant's credible and consistent testimony to the contrary.

In so concluding, we note that at hire, the employer's business manager had warned the claimant that he would be working for the "most miserable" person on the planet. Although the claimant thought she was joking, her statement demonstrated the employer's awareness of DW's problematic behavior to the extent that the business manager felt compelled to warn the claimant. We note

too, that the claimant had complained to his direct lead, Nick, as to the objectionable behavior. Yet, his direct lead took no action; instead, he suggested to the claimant that complaining about DW was futile as there was nothing to be done. We find it significant that even when the claimant notified the employer's business manager and then the owner, the employer took no action and the record fails to reflect any offer by the employer to reassign the claimant to a different job or crew.

An employee has no obligation to accept mistreatment while employed, nor should an employee be required to tolerate public admonition in the course of his employment. (See Appeal Board No. 556527, 521975). Nor do we expect the claimant to continue to seek redress when the employer has no intention of correcting the objectionable behavior. (See Appeal Board No. 589684) Hence, we find that the employer's failure to address DW's unacceptable and unchecked behavior constituted good cause for the claimant's resignation from employment. Accordingly, we conclude that the claimant's separation was under non-disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective December 5, 2022, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER